

Union Calendar No. 564

110TH CONGRESS
2D SESSION

H. R. 758

[Report No. 110–868, Part I]

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2007

Ms. DELAURO (for herself, Mr. ACKERMAN, Mr. ALLEN, Mr. BACA, Ms. BALDWIN, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOSWELL, Mr. BOUCHER, Mr. BURTON of Indiana, Mr. CAPUANO, Ms. CARSON, Mr. CHANDLER, Mrs. CHRISTENSEN, Mr. CLAY, Mr. CLEAVER, Mr. CONYERS, Mr. COOPER, Mr. CROWLEY, Mrs. JO ANN DAVIS of Virginia, Mr. LINCOLN DAVIS of Tennessee, Mrs. DAVIS of California, Mr. DEFazio, Ms. DEGETTE, Mr. DICKS, Mr. DINGELL, Mr. DOGGETT, Mr. DOYLE, Mr. EMANUEL, Mr. ENGEL, Ms. ESHOO, Mr. FARR, Mr. FATTAH, Mr. FRANK of Massachusetts, Mr. GERLACH, Mrs. GILLIBRAND, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of Texas, Ms. HARMAN, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Ms. HIRONO, Mr. HOLDEN, Mr. HOLT, Ms. HOOLEY, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KANJORSKI, Mr. KENNEDY, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. KIND, Mr. KUCINICH, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LOBIONDO, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mrs. MALONEY of New York, Mr. MARKEY, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. McDERMOTT, Mr. MCGOVERN, Mr. MCHUGH, Mr. MCINTYRE, Mr. McNULTY, Mr. MEEHAN, Ms. MILLENDER-McDONALD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. OLVER, Mr. PAYNE, Mr. PRICE of North Carolina, Mr. REYES, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RYAN of Ohio, Ms.

LINDA T. SÁNCHEZ of California, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SHAYS, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STUPAK, Mrs. TAUSCHER, Mr. TAYLOR, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mr. WEINER, Mr. WOLF, Ms. WOOLSEY, Mr. WYNN, Mr. CARNEY, and Mr. WEXLER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 23, 2008

Reported from the Committee on Committee on Energy and Commerce with
an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

SEPTEMBER 23, 2008

Additional sponsors: Mrs. BOYDA of Kansas, Mr. WATT, Mr. VAN HOLLEN, Mr. MELANCON, Mr. ETHERIDGE, Mr. PASCRELL, Mr. MACK, Mr. OBERSTAR, Mr. GILCHREST, Mr. FRELINGHUYSEN, Mrs. CAPPS, Mr. WAMP, Ms. KAPTUR, Mr. COHEN, Ms. ROS-LEHTINEN, Mr. LOEBSACK, Mr. PASTOR, Mr. MICHAUD, Mr. ALTMIRE, Mr. UPTON, Mr. FORTUÑO, Mr. EDWARDS, Mr. GORDON of Tennessee, Mr. SNYDER, Mr. SAXTON, Mr. KAGEN, Mr. SMITH of Washington, Mr. ELLISON, Ms. MOORE of Wisconsin, Mr. PETERSON of Minnesota, Mr. CARDOZA, Mr. ALEXANDER, Mr. HASTINGS of Florida, Mr. CUMMINGS, Mr. RUPPERSBERGER, Mr. COURTNEY, Mr. MORAN of Kansas, Mr. BARROW, Mr. DELAHUNT, Mr. ISSA, Mr. ABERCROMBIE, Mr. MURPHY of Connecticut, Mr. SPACE, Mr. LANGEVIN, Mr. BOREN, Ms. NORTON, Mr. MEEKS of New York, Mr. RANGEL, Mr. NADLER, Mr. MCCOTTER, Mr. ENGLISH of Pennsylvania, Mr. MURTHA, Mr. ORTIZ, Mr. WALSH of New York, Mr. DAVIS of Kentucky, Mr. BOYD of Florida, Mr. BRADY of Pennsylvania, Mr. LANTOS, Mr. SKELTON, Mr. SALAZAR, Mr. MCNERNEY, Mr. BAIRD, Mr. LEWIS of Kentucky, Mr. COSTELLO, Mr. FILNER, Mr. GOODE, Mrs. JONES of Ohio, Mr. JONES of North Carolina, Mr. SESTAK, Mr. HARE, Mr. RUSH, Mr. HONDA, Mr. ROGERS of Michigan, Mr. LATHAM, Mr. RODRIGUEZ, Mr. PLATTS, Ms. SCHWARTZ, Mrs. MYRICK, Ms. CASTOR, Mr. SIRES, Ms. HERSETH SANDLIN, Ms. CLARKE, Mr. BECERRA, Ms. WATSON, Mr. BUTTERFIELD, Mr. WELCH of Vermont, Ms. SUTTON, Mr. CUELLAR, Ms. BEAN, Ms. TSONGAS, Mr. WITTMAN of Virginia, Mr. CARSON, Mr. SARBANES, Mr. ROSKAM, Mr. SOUDER, and Ms. SHEA-PORTER

SEPTEMBER 23, 2008

Committees on Ways and Means and Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Breast Cancer Patient*
5 *Protection Act of 2008”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds that—*

8 *(1) the offering and operation of health plans af-*
9 *fect commerce among the States;*

10 *(2) health care providers located in a State serve*
11 *patients who reside in the State and patients who re-*
12 *side in other States;*

13 *(3) in order to provide for uniform treatment of*
14 *health care providers and patients among the States,*
15 *it is necessary to cover health plans operating in 1*
16 *State as well as health plans operating among the*
17 *several States;*

1 (4) currently, 20 States mandate minimum hos-
 2 pital stay coverage after a patient undergoes a mas-
 3 tectomy;

4 (5) according to the American Cancer Society,
 5 there were 40,954 deaths due to breast cancer in
 6 women in 2004;

7 (6) according to the American Cancer Society,
 8 there are currently over 2.0 million women living in
 9 the United States who have been treated for breast
 10 cancer; and

11 (7) according to the American Cancer Society, a
 12 woman in the United States has a 1 in 8 chance of
 13 developing invasive breast cancer in her lifetime.

14 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 15 **COME SECURITY ACT OF 1974.**

16 (a) *IN GENERAL.*—Subpart B of part 7 of subtitle B
 17 of title I of the Employee Retirement Income Security Act
 18 of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at
 19 the end the following:

20 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 21 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 22 **AND LYMPH NODE DISSECTIONS FOR THE**
 23 **TREATMENT OF BREAST CANCER AND COV-**
 24 **ERAGE FOR SECONDARY CONSULTATIONS.**

25 “(a) *INPATIENT CARE.*—

1 “(1) *IN GENERAL.*—A group health plan, and a
2 health insurance issuer providing health insurance
3 coverage in connection with a group health plan, that
4 provides medical and surgical benefits shall ensure
5 that inpatient (and in the case of a lumpectomy, out-
6 patient) coverage and radiation therapy is provided
7 for breast cancer treatment. Such plan or coverage
8 may not—

9 “(A) except as provided for in paragraph
10 (2)—

11 “(i) restrict benefits for any hospital
12 length of stay in connection with a mastec-
13 tomy or breast conserving surgery (such as
14 a lumpectomy) for the treatment of breast
15 cancer to less than 48 hours; or

16 “(ii) restrict benefits for any hospital
17 length of stay in connection with a lymph
18 node dissection for the treatment of breast
19 cancer to less than 24 hours; or

20 “(B) require that a provider obtain author-
21 ization from the plan or the issuer for pre-
22 scribing any length of stay required under sub-
23 paragraph (A) (without regard to paragraph
24 (2)).

1 “(2) *EXCEPTION.*—*Nothing in this section shall*
2 *be construed as requiring the provision of inpatient*
3 *coverage if the attending physician and patient deter-*
4 *mine that either a shorter period of hospital stay, or*
5 *outpatient treatment, is medically appropriate.*

6 “(b) *PROHIBITION ON CERTAIN MODIFICATIONS.*—*In*
7 *implementing the requirements of this section, a group*
8 *health plan, and a health insurance issuer providing health*
9 *insurance coverage in connection with a group health plan,*
10 *may not modify the terms and conditions of coverage based*
11 *on the determination by a participant or beneficiary to re-*
12 *quest less than the minimum coverage required under sub-*
13 *section (a).*

14 “(c) *NOTICE.*—*A group health plan, and a health in-*
15 *surance issuer providing health insurance coverage in con-*
16 *nection with a group health plan shall provide notice to*
17 *each participant and beneficiary under such plan regarding*
18 *the coverage required by this section in accordance with reg-*
19 *ulations promulgated by the Secretary. Such notice shall*
20 *be in writing and prominently positioned in any literature*
21 *or correspondence made available or distributed by the plan*
22 *or issuer and shall be transmitted—*

23 “(1) *in the next mailing made by the plan or*
24 *issuer to the participant or beneficiary; or*

1 “(2) as part of any yearly informational packet
2 sent to the participant or beneficiary;
3 whichever is earlier.

4 “(d) *SECONDARY CONSULTATIONS.*—

5 “(1) *IN GENERAL.*—A group health plan, and a
6 health insurance issuer providing health insurance
7 coverage in connection with a group health plan, that
8 provides coverage with respect to medical and sur-
9 gical services provided in relation to the diagnosis
10 and treatment of cancer shall ensure that full coverage
11 is provided for secondary consultations by specialists
12 in the appropriate medical fields (including pathol-
13 ogy, radiology, and oncology) to confirm or refute
14 such diagnosis. Such plan or issuer shall ensure that
15 full coverage is provided for such secondary consulta-
16 tion whether such consultation is based on a positive
17 or negative initial diagnosis. In any case in which
18 the attending physician certifies in writing that serv-
19 ices necessary for such a secondary consultation are
20 not sufficiently available from specialists operating
21 under the plan with respect to whose services coverage
22 is otherwise provided under such plan or by such
23 issuer, such plan or issuer shall ensure that coverage
24 is provided with respect to the services necessary for
25 the secondary consultation with any other specialist

1 *selected by the attending physician for such purpose*
2 *at no additional cost to the individual beyond that*
3 *which the individual would have paid if the specialist*
4 *was participating in the network of the plan.*

5 “(2) *EXCEPTION.—Nothing in paragraph (1)*
6 *shall be construed as requiring the provision of sec-*
7 *ondary consultations where the patient determines not*
8 *to seek such a consultation.*

9 “(e) *PROHIBITION ON PENALTIES OR INCENTIVES.—*
10 *A group health plan, and a health insurance issuer pro-*
11 *viding health insurance coverage in connection with a*
12 *group health plan, may not—*

13 “(1) *penalize or otherwise reduce or limit the re-*
14 *imbursement of a provider or specialist because the*
15 *provider or specialist provided care to a participant*
16 *or beneficiary in accordance with this section;*

17 “(2) *provide financial or other incentives to a*
18 *physician or specialist to induce the physician or spe-*
19 *cialist to keep the length of inpatient stays of patients*
20 *following a mastectomy, lumpectomy, or a lymph*
21 *node dissection for the treatment of breast cancer*
22 *below certain limits or to limit referrals for secondary*
23 *consultations;*

24 “(3) *provide financial or other incentives to a*
25 *physician or specialist to induce the physician or spe-*

1 *cialist to refrain from referring a participant or bene-*
 2 *ficiary for a secondary consultation that would other-*
 3 *wise be covered by the plan or coverage involved*
 4 *under subsection (d); or*

5 *“(4) deny to a woman eligibility, or continued*
 6 *eligibility, to enroll or to renew coverage under the*
 7 *terms of the plan or coverage solely for the purpose*
 8 *of avoiding the requirements of this section.”.*

9 *(b) CLERICAL AMENDMENT.—The table of contents in*
 10 *section 1 of the Employee Retirement Income Security Act*
 11 *of 1974 is amended by inserting after the item relating to*
 12 *section 713 the following:*

*“Sec. 714. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”.*

13 *(c) EFFECTIVE DATES.—*

14 *(1) IN GENERAL.—The amendments made by*
 15 *this section shall apply with respect to plan years be-*
 16 *ginning on or after the date that is 90 days after the*
 17 *date of enactment of this Act.*

18 *(2) SPECIAL RULE FOR COLLECTIVE BARGAINING*
 19 *AGREEMENTS.—In the case of a group health plan*
 20 *maintained pursuant to 1 or more collective bar-*
 21 *gaining agreements between employee representatives*
 22 *and 1 or more employers ratified before the date of*
 23 *enactment of this Act, the amendments made by this*
 24 *section shall not apply to plan years beginning before*

1 *the date on which the last collective bargaining agree-*
 2 *ments relating to the plan terminates (determined*
 3 *without regard to any extension thereof agreed to*
 4 *after the date of enactment of this Act). For purposes*
 5 *of this paragraph, any plan amendment made pursu-*
 6 *ant to a collective bargaining agreement relating to*
 7 *the plan which amends the plan solely to conform to*
 8 *any requirement added by this section shall not be*
 9 *treated as a termination of such collective bargaining*
 10 *agreement.*

11 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

12 **ACT RELATING TO THE GROUP MARKET.**

13 (a) *IN GENERAL.*—Subpart 2 of part A of title XXVII
 14 *of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.)*
 15 *is amended by adding at the end the following:*

16 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 17 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 18 **AND LYMPH NODE DISSECTIONS FOR THE**
 19 **TREATMENT OF BREAST CANCER AND COV-**
 20 **ERAGE FOR SECONDARY CONSULTATIONS.**

21 “(a) *INPATIENT CARE.*—

22 “(1) *IN GENERAL.*—A group health plan, and a
 23 *health insurance issuer providing health insurance*
 24 *coverage in connection with a group health plan, that*
 25 *provides medical and surgical benefits shall ensure*

1 *that inpatient (and in the case of a lumpectomy, out-*
2 *patient) coverage and radiation therapy is provided*
3 *for breast cancer treatment. Such plan or coverage*
4 *may not—*

5 *“(A) insofar as the attending physician, in*
6 *consultation with the patient, determines it to be*
7 *medically necessary—*

8 *“(i) restrict benefits for any hospital*
9 *length of stay in connection with a mastec-*
10 *tomy or breast conserving surgery (such as*
11 *a lumpectomy) for the treatment of breast*
12 *cancer to less than 48 hours; or*

13 *“(ii) restrict benefits for any hospital*
14 *length of stay in connection with a lymph*
15 *node dissection for the treatment of breast*
16 *cancer to less than 24 hours; or*

17 *“(B) require that a provider obtain author-*
18 *ization from the plan or the issuer for pre-*
19 *scribing any length of stay required under this*
20 *paragraph.*

21 *“(2) EXCEPTION.—Nothing in this section shall*
22 *be construed as requiring the provision of inpatient*
23 *coverage if the attending physician, in consultation*
24 *with the patient, determines that either a shorter pe-*

1 *riod of hospital stay, or outpatient treatment, is*
 2 *medically appropriate.*

3 “(b) *PROHIBITION ON CERTAIN MODIFICATIONS.—In*
 4 *implementing the requirements of this section, a group*
 5 *health plan, and a health insurance issuer providing health*
 6 *insurance coverage in connection with a group health plan,*
 7 *may not modify the terms and conditions of coverage based*
 8 *on the determination by a participant or beneficiary to re-*
 9 *quest less than the minimum coverage required under sub-*
 10 *section (a).*

11 “(c) *NOTICE.—A group health plan, and a health in-*
 12 *surance issuer providing health insurance coverage in con-*
 13 *nection with a group health plan shall provide notice to*
 14 *each participant and beneficiary under such plan regarding*
 15 *the coverage required by this section in accordance with reg-*
 16 *ulations promulgated by the Secretary. Such notice shall*
 17 *be in writing and prominently positioned in any literature*
 18 *or correspondence made available or distributed by the plan*
 19 *or issuer and shall be transmitted—*

20 “(1) *in the next mailing made by the plan or*
 21 *issuer to the participant or beneficiary; or*

22 “(2) *as part of any yearly informational packet*
 23 *sent to the participant or beneficiary;*
 24 *whichever is earlier.*

25 “(d) *SECONDARY CONSULTATIONS.—*

1 “(1) *IN GENERAL.*—A group health plan, and a
2 health insurance issuer providing health insurance
3 coverage in connection with a group health plan that
4 provides coverage with respect to medical and sur-
5 gical services provided in relation to the diagnosis
6 and treatment of cancer shall ensure that full coverage
7 is provided for secondary consultations by specialists
8 in the appropriate medical fields (including pathol-
9 ogy, radiology, and oncology) to confirm or refute
10 such diagnosis. Such plan or issuer shall ensure that
11 full coverage is provided for such secondary consulta-
12 tion whether such consultation is based on a positive
13 or negative initial diagnosis. In any case in which
14 the attending physician certifies in writing that serv-
15 ices necessary for such a secondary consultation are
16 not sufficiently available from specialists operating
17 under the plan with respect to whose services coverage
18 is otherwise provided under such plan or by such
19 issuer, such plan or issuer shall ensure that coverage
20 is provided with respect to the services necessary for
21 the secondary consultation with any other specialist
22 selected by the attending physician for such purpose
23 at no additional cost to the individual beyond that
24 which the individual would have paid if the specialist
25 was participating in the network of the plan.

1 “(2) *EXCEPTION.—Nothing in paragraph (1)*
2 *shall be construed as requiring the provision of sec-*
3 *ondary consultations where the patient determines not*
4 *to seek such a consultation.*

5 “(e) *PROHIBITION ON PENALTIES OR INCENTIVES.—*
6 *A group health plan, and a health insurance issuer pro-*
7 *viding health insurance coverage in connection with a*
8 *group health plan, may not—*

9 “(1) *penalize or otherwise reduce or limit the re-*
10 *imbursement of a provider or specialist because the*
11 *provider or specialist provided care to a participant*
12 *or beneficiary in accordance with this section;*

13 “(2) *provide financial or other incentives to a*
14 *physician or specialist to induce the physician or spe-*
15 *cialist to keep the length of inpatient stays of patients*
16 *following a mastectomy, lumpectomy, or a lymph*
17 *node dissection for the treatment of breast cancer*
18 *below certain limits or to limit referrals for secondary*
19 *consultations;*

20 “(3) *provide financial or other incentives to a*
21 *physician or specialist to induce the physician or spe-*
22 *cialist to refrain from referring a participant or bene-*
23 *ficiary for a secondary consultation that would other-*
24 *wise be covered by the plan or coverage involved*
25 *under subsection (d); or*

1 “(4) deny to a woman eligibility, or continued
2 eligibility, to enroll or to renew coverage under the
3 terms of the plan or coverage solely for the purpose
4 of avoiding the requirements of this section.”.

5 (b) *EFFECTIVE DATES.*—

6 (1) *IN GENERAL.*—The amendments made by
7 this section shall apply to group health plans for plan
8 years beginning on or after 90 days after the date of
9 enactment of this Act.

10 (2) *SPECIAL RULE FOR COLLECTIVE BARGAINING*
11 *AGREEMENTS.*—In the case of a group health plan
12 maintained pursuant to 1 or more collective bar-
13 gaining agreements between employee representatives
14 and 1 or more employers ratified before the date of
15 enactment of this Act, the amendments made by this
16 section shall not apply to plan years beginning before
17 the date on which the last collective bargaining agree-
18 ments relating to the plan terminates (determined
19 without regard to any extension thereof agreed to
20 after the date of enactment of this Act). For purposes
21 of this paragraph, any plan amendment made pursu-
22 ant to a collective bargaining agreement relating to
23 the plan which amends the plan solely to conform to
24 any requirement added by this section shall not be

1 *treated as a termination of such collective bargaining*
 2 *agreement.*

3 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 4 **RELATING TO THE INDIVIDUAL MARKET.**

5 (a) *IN GENERAL.*—Subpart 2 of part B of title XXVII
 6 *of the Public Health Service Act (42 U.S.C. 300gg–51 et*
 7 *seq.) is amended by adding at the end the following new*
 8 *section:*

9 **“SEC. 2754. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 10 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 11 **AND LYMPH NODE DISSECTIONS FOR THE**
 12 **TREATMENT OF BREAST CANCER AND SEC-**
 13 **ONDARY CONSULTATIONS.**

14 *“The provisions of section 2707 shall apply to health*
 15 *insurance coverage offered by a health insurance issuer in*
 16 *the individual market in the same manner as they apply*
 17 *to health insurance coverage offered by a health insurance*
 18 *issuer in connection with a group health plan in the small*
 19 *or large group market.”.*

20 (b) *EFFECTIVE DATE.*—The amendment made by this
 21 *section shall apply with respect to health insurance coverage*
 22 *offered, sold, issued, renewed, in effect, or operated in the*
 23 *individual market on or after the date of enactment of this*
 24 *Act.*

1 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 2 **OF 1986.**

3 (a) *IN GENERAL.*—Subchapter B of chapter 100 of the
 4 Internal Revenue Code of 1986 is amended—

5 (1) in the table of sections, by inserting after the
 6 item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”;

7 and

8 (2) by inserting after section 9812 the following:

9 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 10 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 11 **AND LYMPH NODE DISSECTIONS FOR THE**
 12 **TREATMENT OF BREAST CANCER AND COV-**
 13 **ERAGE FOR SECONDARY CONSULTATIONS.**

14 “(a) *INPATIENT CARE.*—

15 “(1) *IN GENERAL.*—A group health plan that
 16 provides medical and surgical benefits shall ensure
 17 that inpatient (and in the case of a lumpectomy, out-
 18 patient) coverage and radiation therapy is provided
 19 for breast cancer treatment. Such plan may not—

20 “(A) except as provided for in paragraph
 21 (2)—

22 “(i) restrict benefits for any hospital
 23 length of stay in connection with a mastec-
 24 tomy or breast conserving surgery (such as

1 a lumpectomy) for the treatment of breast
 2 cancer to less than 48 hours; or

3 “(ii) restrict benefits for any hospital
 4 length of stay in connection with a lymph
 5 node dissection for the treatment of breast
 6 cancer to less than 24 hours; or

7 “(B) require that a provider obtain author-
 8 ization from the plan for prescribing any length
 9 of stay required under subparagraph (A) (with-
 10 out regard to paragraph (2)).

11 “(2) *EXCEPTION.*—Nothing in this section shall
 12 be construed as requiring the provision of inpatient
 13 coverage if the attending physician and patient deter-
 14 mine that either a shorter period of hospital stay, or
 15 outpatient treatment, is medically appropriate.

16 “(b) *PROHIBITION ON CERTAIN MODIFICATIONS.*—In
 17 implementing the requirements of this section, a group
 18 health plan may not modify the terms and conditions of
 19 coverage based on the determination by a participant or
 20 beneficiary to request less than the minimum coverage re-
 21 quired under subsection (a).

22 “(c) *NOTICE.*—A group health plan shall provide no-
 23 tice to each participant and beneficiary under such plan
 24 regarding the coverage required by this section in accord-
 25 ance with regulations promulgated by the Secretary. Such

1 *notice shall be in writing and prominently positioned in*
 2 *any literature or correspondence made available or distrib-*
 3 *uted by the plan and shall be transmitted—*

4 “(1) *in the next mailing made by the plan to the*
 5 *participant or beneficiary; or*

6 “(2) *as part of any yearly informational packet*
 7 *sent to the participant or beneficiary;*

8 *whichever is earlier.*

9 “(d) *SECONDARY CONSULTATIONS.—*

10 “(1) *IN GENERAL.—A group health plan that*
 11 *provides coverage with respect to medical and sur-*
 12 *gical services provided in relation to the diagnosis*
 13 *and treatment of cancer shall ensure that full coverage*
 14 *is provided for secondary consultations by specialists*
 15 *in the appropriate medical fields (including pathol-*
 16 *ogy, radiology, and oncology) to confirm or refute*
 17 *such diagnosis. Such plan or issuer shall ensure that*
 18 *full coverage is provided for such secondary consulta-*
 19 *tion whether such consultation is based on a positive*
 20 *or negative initial diagnosis. In any case in which*
 21 *the attending physician certifies in writing that serv-*
 22 *ices necessary for such a secondary consultation are*
 23 *not sufficiently available from specialists operating*
 24 *under the plan with respect to whose services coverage*
 25 *is otherwise provided under such plan or by such*

1 *issuer, such plan or issuer shall ensure that coverage*
2 *is provided with respect to the services necessary for*
3 *the secondary consultation with any other specialist*
4 *selected by the attending physician for such purpose*
5 *at no additional cost to the individual beyond that*
6 *which the individual would have paid if the specialist*
7 *was participating in the network of the plan.*

8 *“(2) EXCEPTION.—Nothing in paragraph (1)*
9 *shall be construed as requiring the provision of sec-*
10 *ondary consultations where the patient determines not*
11 *to seek such a consultation.*

12 *“(e) PROHIBITION ON PENALTIES.—A group health*
13 *plan may not—*

14 *“(1) penalize or otherwise reduce or limit the re-*
15 *imbursement of a provider or specialist because the*
16 *provider or specialist provided care to a participant*
17 *or beneficiary in accordance with this section;*

18 *“(2) provide financial or other incentives to a*
19 *physician or specialist to induce the physician or spe-*
20 *cialist to keep the length of inpatient stays of patients*
21 *following a mastectomy, lumpectomy, or a lymph*
22 *node dissection for the treatment of breast cancer*
23 *below certain limits or to limit referrals for secondary*
24 *consultations;*

1 “(3) provide financial or other incentives to a
 2 physician or specialist to induce the physician or spe-
 3 cialist to refrain from referring a participant or bene-
 4 ficiary for a secondary consultation that would other-
 5 wise be covered by the plan involved under subsection
 6 (d); or

7 “(4) deny to a woman eligibility, or continued
 8 eligibility, to enroll or to renew coverage under the
 9 terms of the plan solely for the purpose of avoiding
 10 the requirements of this section.”.

11 (b) *CLERICAL AMENDMENT.*—The table of contents for
 12 chapter 100 of such Code is amended by inserting after the
 13 item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”.

14 (c) *EFFECTIVE DATES.*—

15 (1) *IN GENERAL.*—The amendments made by
 16 this section shall apply with respect to plan years be-
 17 ginning on or after the date of enactment of this Act.

18 (2) *SPECIAL RULE FOR COLLECTIVE BARGAINING*
 19 *AGREEMENTS.*—In the case of a group health plan
 20 maintained pursuant to 1 or more collective bar-
 21 gaining agreements between employee representatives
 22 and 1 or more employers ratified before the date of
 23 enactment of this Act, the amendments made by this
 24 section shall not apply to plan years beginning before

1 *the date on which the last collective bargaining agree-*
 2 *ments relating to the plan terminates (determined*
 3 *without regard to any extension thereof agreed to*
 4 *after the date of enactment of this Act). For purposes*
 5 *of this paragraph, any plan amendment made pursu-*
 6 *ant to a collective bargaining agreement relating to*
 7 *the plan which amends the plan solely to conform to*
 8 *any requirement added by this section shall not be*
 9 *treated as a termination of such collective bargaining*
 10 *agreement.*

11 **SEC. 7. OPPORTUNITY FOR INDEPENDENT, EXTERNAL**
 12 **THIRD PARTY REVIEWS OF CERTAIN NON-**
 13 **RENEWALS AND DISCONTINUATIONS, IN-**
 14 **CLUDING RESCISSIONS, OF INDIVIDUAL**
 15 **HEALTH INSURANCE COVERAGE.**

16 *(a) CLARIFICATION REGARDING APPLICATION OF*
 17 *GUARANTEED RENEWABILITY OF INDIVIDUAL HEALTH IN-*
 18 *SURANCE COVERAGE.—Section 2742 of the Public Health*
 19 *Service Act (42 U.S.C. 300gg–42) is amended—*

20 *(1) in its heading, by inserting “, CONTINU-*
 21 ***ATION IN FORCE, INCLUDING PROHIBITION OF***
 22 ***RESCISSION,”*** after ***“GUARANTEED RENEW-***
 23 ***ABILITY”***;

24 *(2) in subsection (a), by inserting “, including*
 25 *without rescission,”* after *“continue in force”; and*

10 ***“SEC. 2746. OPPORTUNITY FOR INDEPENDENT, EXTERNAL***
11 ***THIRD PARTY REVIEW IN CERTAIN CASES.***

22 “(b) *INDEPENDENT DETERMINATION.*—If the indi-
23 vidual requests such review by an independent, external
24 third party of a nonrenewal, discontinuation, or rescission
25 of health insurance coverage, the coverage shall remain in

1 *effect until such third party determines that the coverage*
2 *may be nonrenewed, discontinued, or rescinded under sec-*
3 *tion 2742(b)(2).”.*

4 *(c) EFFECTIVE DATE.—The amendments made by this*
5 *section shall apply after the date of the enactment of this*
6 *Act with respect to health insurance coverage issued before,*
7 *on, or after such date.*

Union Calendar No. 564

110TH CONGRESS
2^D Session

H. R. 758

[Report No. 110-868, Part I]

A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

SEPTEMBER 23, 2008

Committees on Ways and Means and Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed